

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

WILTON AUGUSTINE, ET AL : DOCKET NO. 08-1102

VS. : JUDGE TRIMBLE

EMPLOYERS MUTUAL CASUALTY : MAGISTRATE JUDGE KAY
INS. CO.

MEMORANDUM RULING AND JUDGMENT

Before the court is an “Appeal of Ruling and Report and Recommendation of Magistrate Judge Pursuant to LR 74.1W” (R. #58) and objections to the Report and Recommendation of the Magistrate (R. #53) filed by plaintiffs, Wilton Augustine, and ASA Family Enterprises, Inc. d/b/a Big A Pawn Shop. Plaintiffs challenge the Magistrate’s ruling and order denying their motion to remand,¹ and the Magistrate’s report recommending that defendants, Solid Wall, LLC, Don Simon, d/b/a Simon Construction, Simons Building, and Newtech Building, Inc. (“the Simon defendants”) be dismissed because plaintiffs have been unable to establish a cause of action against these defendants.

In her ruling,² Magistrate Judge Kay concluded that the motion to remand should be denied because there was actual fraud in the pleading of jurisdictional facts. The court has reviewed the memoranda of the parties with the attached exhibits, and concludes that the Magistrate’s findings and conclusions are entirely correct, and that plaintiffs’ appeal is without merit. Accordingly, for

¹ R. #47.


² Id.

the reasons set forth in Magistrate Judge Kay's Memorandum Ruling, we affirm the denial of the motion to remand and **OVERRULE** plaintiff's objections/appeal to the Ruling.

In her report,³ and for the reasons set forth in her Memorandum Ruling, Magistrate Kay recommended that the Simon defendants be dismissed because plaintiffs had not established a cause of action against these defendants. For the reasons stated in the Memorandum Ruling⁴ of the Magistrate Judge previously filed herein and after an independent review of the record, and a *de novo* determination of the issues, and consideration of the objections filed herein, and having determined that the findings are correct under applicable law; it is hereby

ORDERED, ADJUDGED AND DECREED that defendants, US Solid Wall, LLC, Don Simon, d/b/a Simon Construction, Simons Building, and Newtech Building, Inc. are hereby dismissed.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 17th day of February, 2011.



JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE

³ R. #53.

⁴ R. #47.